

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

LEONARD E. BRISCOE
THE BRISCOE COMPANY
BRISCOE ENTERPRISES LIMITED
BRISCOE ENTERPRISES LIMITED
OF FLORIDA III
WEDGEWOOD PLAZA ASSOCIATES,
LTD. THE LEONARD E. BRISCOE COMPANY OF TEXAS, INC.
THE BRISCOE MANAGEMENT COMPANY

Respondents.

HUDALJ 91-1703-DB(S)

Decided: April 9, 1992

Elaine Metlin, Esquire
For the Respondents

Ronnie Ann Wainwright
For the Department

Before: PAUL G. STREB
Administrative Law Judge

INITIAL DETERMINATION

STATEMENT OF THE CASE

The Respondents in this matter are Leonard E. Briscoe and his alleged affiliates, The Briscoe Company, Briscoe Enterprises Limited, Briscoe Enterprises Limited of Florida III, Wedgewood Plaza Associates, Ltd., The Leonard E. Briscoe Company of Texas, Inc., and The Briscoe Management Company. They have appealed a suspension effected on May 24, 1991, by the Assistant Secretary for Community Planning and Development ("the Assistant Secretary"), U.S. Department of Housing and Urban Development ("the Department" or "HUD") pursuant to 24 C.F.R. Part 24. By imposing the suspension, the Assistant Secretary has excluded Respondents from

participating in nonprocurement transactions covered by 24 C.F.R. Sec. 24.110(a)(1), e.g., grant programs, at HUD and throughout the executive branch of the federal government, and from participating in procurement contracts with HUD.

The Assistant Secretary's May 24, 1991 notice of suspension was based on information that Respondents were currently the subjects of a federal investigation; the notice was also based on evidence that Respondents had violated HUD requirements and contractual obligations under HUD's Urban Development Action Grant ("UDAG") Program. On July 2, 1991, Respondents filed their request for a hearing on the suspension.

On July 8, 1991, the Assistant Secretary issued a second notice of suspension superseding the May 24, 1991 notice. The second notice was based on Respondent Briscoe's indictment by a grand jury for the U.S. District Court for the Southern District of Florida for violations of 18 U.S.C. Secs. 201(b)(1), 201(c)(1), 371, and 1001. The notice provided that the suspension would remain in effect pending the resolution of the subject matter of the indictments and any legal, debarment, or Program Fraud Civil Remedies Act proceedings that may ensue.

On July 30, 1991, the Assistant Secretary issued a letter amending the July 8 notice of suspension. In that letter, the Department added as a further basis for the suspension Respondent Briscoe's indictment by a grand jury for the U.S. District Court for the District of Columbia for violations of 18 U.S.C. Secs. 2, 1001, 1010, 1012, 1341, and 1343. On August 15, 1991, Respondents filed their notice of appeal and request for a hearing on the superseding suspension. Because this action is based solely upon indictments, the hearing in this case is limited to submission of documentary evidence and written briefs. See 24 C.F.R. Secs. 24.313(b)(2)(ii), .413.

At the request of the parties, the proceedings concerning the suspension were stayed until November 1, 1991, when an Order established a schedule for the filing of briefs and documentary evidence. The Department filed its brief and evidence on January 6, 1992. Respondents did not file a brief or evidence. However, Respondent Briscoe filed a two-page opposition to the Department's brief on March 9, 1992. The record closed on March 13, 1992.

FINDINGS OF FACT

In connection with his actions as a real estate developer doing business in Florida, Respondent Briscoe was charged in a seven-count criminal indictment ("Indictment I"), returned by a grand jury for the U.S. District Court for the Southern District of Florida, with violating 18 U.S.C. Secs. 201(b)(1) (bribery to influence public official), 201(c)(1) (bribery of public official to perform official act) and 371 (conspiracy). Indictment I alleges that Respondent Briscoe and a co-defendant engaged in a conspiracy between mid-1985 and March 1990 to obtain HUD approval of three projects under HUD's UDAG Program, and to obtain favorable terms and conditions in the Grant

Agreements relating to those projects. As alleged in the indictment, the projects were developed by Respondent Briscoe and business entities over which he exercised management and control, and his unlawful conduct included bribery of a HUD official and preparation of false and misleading documentation. Department's Ex. 1.

Respondent Briscoe was further charged in a sixteen-count criminal indictment ("Indictment II") with violating 18 U.S.C. Sec. 1001 (false statements), 371 (conspiracy), and 2 (aiding and abetting). Indictment II, also returned by a grand jury for the Southern District of Florida, concerns a conspiracy allegedly engaged in by Respondent Briscoe and another co-defendant from August 1985 to February 1990. The alleged conspiracy concerned one of the projects involved in Indictment I, with particular regard to its funding, in part, by a grant awarded pursuant to HUD's UDAG Pocket of Poverty Program. Respondent Briscoe and certain of his business ventures allegedly participated in the development of the project. As alleged in the indictment, Respondent Briscoe's unlawful conduct entailed the knowing and willful submission of false, fictitious, and fraudulent statements, representations, and documents to HUD so that monies intended for use in the project could be unlawfully diverted to him and his co-defendant. Department's Ex. 2.

Finally, Respondent Briscoe was charged in a six-count criminal indictment ("Indictment III") with violating 18 U.S.C. Secs. 1001 (false statements), 1010 (HUD fraudulent transactions), 1012 (false HUD reports and statements), 1343 (wire fraud), 1341 (mail fraud), and 2 (aiding and abetting). Indictment III was returned by a grand jury for the United States District Court for the District of Columbia. Indictment III concerns another of the projects involved in Indictment I, with particular regard to conduct that occurred in July 1986. The primary focus of Indictment III is a letter from an unindicted coconspirator, employed by a financial institution in New York, to a HUD official. As alleged in Indictment III, the letter falsely stated, among other things, that the financial institution had issued a firm financial commitment for the project, as required by HUD's UDAG program. According to Indictment III, Respondent Briscoe knew the letter contained false, fictitious, and fraudulent statements, but he made use of it and caused it to be passed and published for the purpose of influencing the awarding of a UDAG. Department's Ex. 3.

ANALYSIS AND CONCLUSIONS

A suspension will be sustained if the respondent is covered by the applicable HUD regulations, if there is cause for suspension, and if the immediate action of suspension is necessary to protect the public interest and the federal government's interest in doing business with responsible persons. 24 C.F.R. Secs. 24.110, .115, .400. The Department bears the burden to prove by "adequate evidence" that there was cause for the suspension. *Id.* Secs. 24.313(b)(3) and (4), .400(b)(1), .413. "Adequate evidence" is defined as "[i]nformation sufficient to support the reasonable belief that a particular act or omission has occurred." *Id.* Sec. 24.105(a).

Jurisdiction

The applicable HUD regulations apply to all persons who have participated, are currently participating, or may reasonably be expected to participate in transactions under federal nonprocurement programs (covered transactions). *Id.* Sec. 24.110(a). The Department alleged in the July 8, 1991 suspension notice that Respondent Briscoe had participated in a covered transaction, or that he may reasonably be expected to participate in a covered transaction in the future. He did not deny that allegation in his August 15, 1991 appeal of the suspension notice.

Pursuant to the regulations and the Department's July 8 suspension notice, that notice constituted the Department's complaint, and Respondent's appeal constituted his answer. *See id.* Secs. 24.313(b), .413, 26.10(a), .11. An allegation is deemed admitted when not specifically denied in a respondent's answer. *Id.* Sec. 26.11. Therefore, Respondent Briscoe is covered by the regulations.

Suspension actions may include affiliates of a participant who are specifically named and given notice of the suspension and an opportunity to respond. *Id.* Secs. 24.325(a)(2), .420. Individuals or legal entities are affiliates of each other "if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both." *Id.* Sec. 24.105(b) (emphasis in original). *See also id.* Sec. 24.105(n).

The Department alleged in the July 8, 1991 notice of suspension that the following entities are Respondent Briscoe's affiliates--The Briscoe Company, Briscoe Enterprises Limited, Briscoe Enterprises Limited of Florida III, Wedgewood Plaza Associates, Ltd., The Leonard E. Briscoe Company of Texas, Inc., and The Briscoe Management Company. Respondents did not deny the Department's allegation of affiliation in their August 15, 1991 appeal of the Department's notice. Those entities had notice of the suspension because the July 2 and August 15 appeals were filed by the same counsel on behalf of all of them.

As discussed above, the suspension notice constituted the Department's complaint, and Respondents' appeal constituted their answer. *See id.* Secs. 24.313(b), .413, 26.10(a), .11. An allegation is deemed admitted when not specifically denied in a respondent's answer. *Id.* Sec. 26.11. Accordingly, the named affiliates listed above are also covered by the regulations.

Cause For Suspension

Cause for suspension exists upon "adequate evidence" either to suspect the commission of an offense listed in 24 C.F.R. Sec. 24.305(a) or that cause for debarment under Sec. 24.305 may exist. *Id.* Sec. 24.405(a). An indictment constitutes "adequate evidence" for purposes of suspension actions. *Id.* Secs. 24.314(b)(3), .405(b).

The three indictments described above charged Respondent Briscoe with several of the offenses listed in Sec. 24.305(a). See *id.* Secs. 24.305(a)(1) (includes commission of fraud or criminal offense in connection with obtaining or performing a public or private agreement or transaction), 24.305(a)(3) (includes commission of bribery, falsification of records, and making false claims). Thus, those indictments clearly constitute cause for suspension under 24 C.F.R. Sec. 24.405.

In his opposition to the Department's brief, Respondent Briscoe takes issue with the Department's reliance in bringing this suspension action "solely on the fact that [he] has been accused of criminal conduct." According to Respondent Briscoe, despite the presumption of innocence afforded criminal defendants, the Department has concluded that the allegations of wrongdoing are the functional equivalent of a lack of business honesty and integrity and a lack of present responsibility.

There is no merit to that argument. As stated by the United States Court of Appeals for the Fourth Circuit in *James A. Merritt and Sons v. Marsh*, 791 F.2d 328, 330-31 (4th Cir. 1986):

A decision to issue an indictment is made by a deliberative public body acting as an arm of the judiciary, operating under constitutional and other legal constraints. The Constitution does not require the government to wait for the outcome of the criminal proceedings before implementing an administrative suspension when a contractor has been accused of fraud after the grand jury's investigation and deliberative process....The formalities attendant to issuing an indictment carry sufficient indicia of reliability to allow the government to act to protect itself against future dealing with someone accused of fraud.

Public And Governmental Interest; Need For Immediate Action

It is the policy of the federal government to do business only with responsible persons. 24 C.F.R. Sec. 24.115(a). "Responsibility" is a term of art which encompasses business integrity and honesty. See, e.g., *Delta Rocky Mountain Petroleum, Inc. v. U.S. Dep't of Defense*, 726 F. Supp. 278, 280 (D. Colo. 1989). Determining "responsibility" requires an assessment of the current risk that the government will be injured in the future by doing business with a respondent. See *Shane Meat Co., Inc. v. U.S. Dep't of Defense*, 800 F.2d 334, 338 (3d Cir. 1986). HUD is authorized to impose suspensions to protect the public and governmental interest, but not for purposes of punishment. See 24 C.F.R. Sec. 24.115(b). Suspension is a serious action, and may be imposed only when immediate action is necessary to protect

the public interest. *Id.* Sec. 24.400(b).

The numerous and serious charges against Respondent Briscoe include bribery of a public official, conspiracy, submission of false statements, fraudulent transactions with HUD, false HUD reporting and statements, wire fraud, mail fraud, and aiding and abetting. Thus, there is reason to believe that he repeatedly engaged in conduct demonstrating a lack of business honesty and integrity and posing a clear and immediate risk to the public and the government. *See Merritt*, 791 F.2d at 331. Therefore, I conclude that the immediate suspension of Respondent Briscoe was necessary to protect the public and governmental interests.

Because the other Respondents are affiliates of Respondent Briscoe, their immediate suspension is also necessary to protect the public and governmental interests. *See* 24 C.F.R. Sec. 24.325(a)(2). If his affiliates were not suspended, Respondent Briscoe could defeat the purpose of his suspension by continuing to do business with the federal government through the companies that he controls.

Respondent Briscoe requests that the suspension be lifted pending the outcome of the criminal actions upon which the suspension is based. He asserts that he has consistently pressed for a speedy resolution of those cases. *See* Respondent Briscoe's Opposition. However, his efforts in that regard are not relevant to the issue of whether he should be suspended pending the resolution of those cases and any related proceedings.

DETERMINATION

The Assistant Secretary's suspension of Respondents from participating in nonprocurement transactions covered by 24 C.F.R. Sec. 24.110(a)(1) at HUD and throughout the Executive Branch of the federal government, and from participating in procurement contracts with HUD is AFFIRMED.

PAUL G. STREB
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this ORDER issued by PAUL G. STREB, Administrative Law Judge, HUDALJ 91-1703-DB(S), were sent to the following parties on this 9th day of April, 1992, in the manner indicated:

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